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**VIA FACSIMILE AND OVERNIGHT DELIVERY**

Lawrence H. Norton, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463  
Attn: Mark A. Goodin, Esq.

RE: MUR 5628 – John Cavanagh

Dear Mr. Norton:

We are submitting this letter on behalf of John Cavanagh, a former executive of AMEC/Morse Diesel,<sup>1</sup> in response to the recent reason-to-believe ("RTB") finding and accompanying Factual and Legal Analysis ("FLA"). We have enclosed an executed Designation of Counsel form.

The FLA is factually vague and inaccurate and legally flawed. In addition, the Federal Election Commission's ("FEC's") enforcement action against Mr. Cavanagh is time-barred by the statute of limitations. The allegation of "knowing and willful" conduct is particularly ill-founded and without any basis. Thus, the FEC should end its actions against Mr. Cavanagh and close this MUR.

<sup>1</sup> Please note that Mr. Cavanagh is a former Chief Operating Officer, not a former Chief Executive Officer, as he is erroneously described in the Factual and Legal Analysis.

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I. The Factual and Legal Analysis is Flawed and the Allegation of "Knowing and Willful" Conduct is Without Merit

The FLA that accompanied the FEC's RTB finding against Mr. Cavanagh is defective with regard to both application of the law and description of the facts. With regard to application of the law, the FLA is conclusory and otherwise flawed. For example, the Second and Fifth Circuit cases cited by the FEC with regard to the "knowing and willful" standard are inapplicable to the violations alleged against Mr. Cavanagh, as they involve federal criminal charges of fraud and false statements pursuant to 18 U.S.C. § 1001, a statute that is not at issue in this MUR. See *United States v. Whab*, 355 F.3d 155, 157-58 (2d Cir. 2004); *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Rather, the applicable standard is found in the District of Columbia Circuit decision in *AFL-CIO v. Federal Election Commission*, 628 F.2d 97, 101 (D.C. Cir. 1980) (holding that a violation of federal election law is knowing and willful when an individual's behavior is equivalent to a "knowing, conscious, and deliberate flaunting of the Act;" that essentially, the individual must have specific knowledge that his actions are unlawful). Further, in the FLA the FEC has cited no evidence that Mr. Cavanagh was even generally aware of the provisions of federal election law, much less that he had specific knowledge of what behavior would constitute a violation. Indeed, Mr. Cavanagh categorically rejects any allegation of "knowing and willful" violations on his part.

II. The Enforcement Action is Time-Barred by the Statute of Limitations.

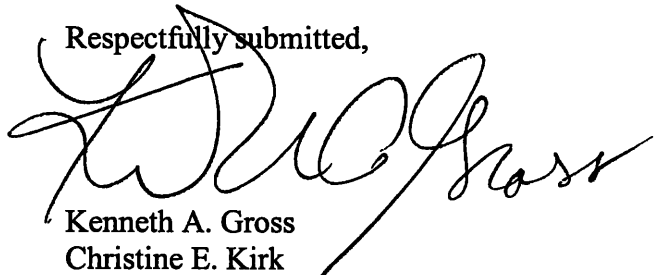
Although we feel compelled to deny the ill-founded allegations in the FEC's FLA, it is not necessary to get into a point-by-point refutation, because the FEC is time-barred from bringing any action against Mr. Cavanagh. All of the alleged violations occurred over five years ago. As the applicable statute of limitations is the omnibus five-year statute of limitations set forth in 28 U.S.C. § 2462, the FEC's action in this matter is time-barred. See *Federal Election Commission v. Williams*, 104 F.3d 237, 239-40 (9th Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997); *Federal Election Commission v. Christian Coalition*, 965 F. Supp. 66, 69 (D.D.C. 1997); *Federal Election Commission v. National Right to Work Committee, Inc.*, 916 F. Supp. 10, 13 (D.D.C. 1996); *Federal Election Commission v. National Republican Senatorial Committee*, 877 F. Supp. 15, 17 (D.D.C. 1995). Moreover, as (i) a federal election law violation claim "accrues" at the time of the alleged violation, not at the time of report to, or investigation by, the FEC (see *Christian Coalition*, 965 F. Supp. at 70; *National Right to Work Committee*, 916 F. Supp. at 13; *National Republican Senatorial Committee*, 877 F. Supp. at 19-20) and (ii) administrative procedures do not toll the statute of limitations (see *National Right*

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to Work Committee, 916 F. Supp. at 14; *National Republican Senatorial Committee*, 877 F. Supp. at 20), the FEC does not appear to have any basis to assert that the alleged violations are within the statute or that equitable tolling should apply in this case. Moreover, the FEC has been specifically aware of the alleged violations since at least the time of AMEC's *sua sponte* submission in 2003 and has had the general authority to investigate the alleged contributions at any time since their alleged beginning "as early as the late 1980's."

For the foregoing reasons, the FEC should take no further action against Mr. Cavanagh.

Respectfully submitted,



Kenneth A. Gross  
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& Flom LLP

Attorneys for John Cavanagh

Enclosure

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